



U.S. Embassy Seoul

WHAT TO EXPECT WHEN YOU ARE **A**RRRESTED



U.S. Embassy Seoul
American Citizen Services

<http://seoul.usembassy.gov>
SeoulInfoACS@state.gov
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*Korean Criminal Procedure and
Your Legal Rights*



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IMMIGRATION

The Korean Immigration Service may issue a deportation order after an individual has been sentenced by a criminal court, or after the individual completes his/her prison sentence. Individuals who are convicted of lesser crimes may be deported back to their country of origin rather than having to serve their prison sentence in Korea. This decision is at the discretion of immigration officials. In some cases, deportation orders can be appealed.

Transfer to a U.S. Prison

The United States and Korea have a treaty relationship that provides for the transfer of prisoners under certain conditions. Transfers will be considered only when a sentence is final and no appeals are pending. U.S. consular officers can provide U.S. citizen prisoners in Korea with information on contacting the appropriate officials to initiate consideration of a request to transfer to the United States to serve the remainder of a sentence.





KOREAN PRISONS

In Korea, special sections of prisons are generally set aside for foreigners. It is Korean custom for people to sleep on the floor, so in most Korean prison cells, blankets are placed on the floor for that purpose.

Medical treatment is available in all correctional facilities. Serious medical problems are referred to local hospitals.

Inmates are allowed to read, listen to the radio, and watch TV. Inmates are not allowed to smoke or drink alcohol, but they are allowed to drink coffee and tea. U.S. citizens may be provided with Western food upon request. Some inmates are permitted to earn money in the correctional work program, or they may receive money sent by relatives. These funds can be used to buy a small quantity of supplemental food from the prison store.

Visitors are allowed, but the number and length of visits are strictly controlled. All mail is monitored. Telephone calls are permitted by inmates who have obtained 1st or 2nd ranks (rankings are given by prison authorities based on good behavior, participation in work programs, etc., with 1 being the highest, and 4 the lowest). Authorities consider this ranking when deciding whether to grant parole. Inmates who have not achieved sufficient rank are able to make telephone calls only with permission of the prison warden.

Many correctional facilities have workshops where some inmates may be allowed to work at various trades and earn pocket money. Prison authorities may permit prisoners who have special skills or who have demonstrated good behavior to perform tasks in fields where they have experience.

U.S. citizen inmates should not expect to be spared punishment if Korean prisoners would be punished for the same behavior.

INTRODUCTION

U.S. citizens who live, work, or visit in Korea are subject to Korean laws and legal procedures. If you are arrested, you can request a visit by a U.S. consular officer. Consular officers will make every effort to ensure that you are not mistreated, that you receive necessary health care, that you are not penalized for being a foreigner, and that you receive equitable treatment under the local criminal justice system. Consular officers can also provide information on the Korean criminal law system. However, consular officers cannot interfere in Korean judicial affairs, provide you with legal advice, seek preferential treatment for you, or assume any responsibility as guarantor, surety, or supervisor for your parole.

This document is intended to give you basic information on how the Korean criminal law system functions. It is not a substitute for legal advice, which can be provided only by an attorney qualified to practice law in Korea. You can find an attorney on our Attorney's List at <http://photos.state.gov/libraries/korea/187344/ACS/Lawyers%20List.pdf>. If you believe that your legal rights have been violated under Korean or international law, you should inform your attorney. You should also bring your concerns to the attention of U.S. consular officers.



INVESTIGATIONS

A Korean criminal case usually starts with an investigation. Both the Prosecutors Office and the police have the authority to investigate a criminal case. If the police investigate a case, they do so under the supervision of the Prosecutor's Office. During an investigation, both the police and/or the Prosecutor's Office may ask suspects and witnesses to come voluntarily to their offices for interrogation. An individual may choose not to cooperate.

If the police and/or Prosecutor's Office decides that detention is warranted, it must obtain a detention warrant from a court. A suspect seen committing a crime or suspected of potentially destroying evidence or escaping can be detained without a detention warrant for up to 48 hours. If the police and/or the Prosecutor's Office wishes to detain the suspect longer than 48 hours, it must obtain a detention warrant within the 48-hour period. A court is likely to issue a detention warrant if the suspect has no fixed dwelling, if there is a possibility that the suspect will destroy evidence, or if there is a fear that the suspect will flee. Foreigners are often considered to be a flight risk.

During an investigation, the police and/or the Prosecutor's Office can interrogate a suspect. These interrogations are often recorded, and a transcript of the interrogation is always made and used later as evidence in a criminal trial if one occurs. The suspect can request a copy of the transcript at the Public Service Center. Suspects are entitled to have an attorney present during these interrogations; however, at this stage of the process, they do not receive assistance from a public defender. Suspects have a right to remain silent, and their silence cannot be used in court against them. A suspect who chooses to hire an attorney may inform the police

Length of Criminal Proceedings

The duration of the case in the court of first instance (usually the district court) will depend on the number of sessions that are held. For a foreigner who is charged with a drug offense or other felony, there are usually one to three sessions for trying the case. The sessions might be two to three weeks apart. For cases where the defendant is not detained, the sessions are usually four weeks apart. However, in the event the defendant confesses to the crimes, the trial will be limited to one session.

Prosecutors are allowed to appeal a not-guilty verdict and can block a foreigner's departure from Korea until a final judgment is rendered, or until appeals have been exhausted, or until the allowed appeal period has lapsed.

Appeals

The accused and the prosecutor have the right to appeal the sentence within seven days from the announcement of verdict.





Trial

When the prosecutor believes a case is more serious or that a prison sentence is warranted, the prosecutor may request a trial. Once an accused individual becomes the defendant in a criminal case, he or she will be served with the writ of indictment. The writ will show the basic information of the crime(s) with which the defendant is charged, the prosecutor's version of the facts, and a description of the alleged crime. The prosecutor is required to submit to the court all relevant evidence that has been gathered in the investigation, but the prosecutor is not required to do so until shortly—often a matter of a few days—before the trial begins.

Almost all trials are heard by judges, without the assistance of a jury. In cases where a jury is used, the presiding judge is allowed to disregard any verdict of the jury.

If a case proceeds to trial, there are several steps in the trial process:

1. Filing an information
2. Setting a trial date
3. Opening proceedings
4. Presenting evidence
5. Interrogation of the accused by a judge and by the prosecutor
6. Closing argument
7. Decision
8. Appeal

As in the United States, a suspect is presumed innocent until found guilty.

that he or she will not answer any questions or sign any documents until his/her attorney is present. The police are allowed to continue to detain a suspect who is refusing to speak. Suspects who choose not to speak to the police about the case are nevertheless still legally required to answer questions related to identity, age, address, occupation, citizenship, and other personal information.

Exit Ban

If the prosecutor decides the suspect will not be detained while an investigation is ongoing, the Prosecutor's Office may place an exit ban on the suspect to prevent him or her from leaving Korea.

Bail

Detained persons have the right to seek bail. Bail is not guaranteed. If granted, the court will set the amount.





CRIMINAL DEFENDANT'S RIGHTS

Criminal suspects in Korea have many of the same rights as criminal suspects in the United States. These rights include:

1. The right of the suspect to remain silent without the suspect's silence being used against him or her in court.
2. The right of the suspect to counsel, including the right to have counsel during interrogation if he or she chooses (although the suspect must pay for counsel during the interrogation phase).
3. The right of the suspect to have a consular officer from the U.S. Embassy visit him or her. If after being informed of this right, the suspect chooses not to have a consular officer visit, the police will not notify the Embassy of the suspect's arrest.
 - If the suspect is covered by a Status-of-Forces Agreement (SOFA) in Korea, the police will contact U.S. military authorities and the suspect will be visited by the military instead of by the Embassy.
4. The right of the suspect to receive an explanation of the charges against him or her.
 - This includes the right to have any Korean documents the suspect is asked to sign translated into English. During questioning by the investigative authorities, a person who does not understand Korean is entitled to be assisted by an interpreter or English-speaking official. Suspects are entitled to hire their own attorney for the interrogation phase; however, public defenders for indigent suspects are appointed only if the case proceeds to trial.

CRIMINAL PROCEEDINGS

In Korea, there is no grand jury procedure, and there is no preliminary hearing by a judge. Only the Prosecutor's Office can decide whether to prosecute a case.

Prosecutors have three methods of resolving a criminal case:

1. They can decide not to prosecute
2. They can ask for a summary judgment
3. They can proceed to a full trial

Non-Prosecution

If a prosecutor decides the suspect is not guilty or that the actions do not constitute a crime or that there is no authority to prosecute, they can choose to drop the charges and not prosecute the case. The prosecutor can also choose to suspend the indictment on the condition that the defendant not commit another crime. If another crime is committed after a suspension of indictment, then the prosecutor can proceed with both cases.

Summary Judgment

The prosecutor may request a summary judgment for lesser crimes where the Prosecutor's Office seeks only a fine as punishment. In a summary judgment, the suspect never appears before a judge. The prosecutor simply asks the court to issue a summary judgment against the suspect and to impose a fine. If the court agrees, finds the suspect guilty, and imposes a fine, the suspect is allowed to appeal if he or she so wishes.